

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ARTUR DYSKO, et al.,

Plaintiffs,

-against-

MARCIN LACH, et al.,

Defendants.

MEMORANDUM AND ORDER

09-CV-1068 (KAM)(JO)

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MATSUMOTO, United States District Judge:

Before the court is a Report and Recommendation issued by Magistrate Judge James Orenstein on January 29, 2010 ("1/29/10 Report & Recommendation"), recommending that the court dismiss all claims asserted by plaintiff Krzysztoff Fiuk ("Fiuk") for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). (Doc. No. 23.) For the reasons that follow, the 1/29/10 Report & Recommendation is adopted in its entirety.

Notice of the 1/29/10 Report & Recommendation was sent electronically to all parties via the court's electronic filing system on January 29, 2010, and Magistrate Judge Orenstein further directed plaintiffs' counsel to use his best efforts to provide a copy of the 1/29/10 Report & Recommendation to Fiuk and to file a certification attesting to those efforts no later than February 8, 2010. (See id. docket entry.) Pursuant to that direction, plaintiffs' counsel filed a Certificate of Service on February 16, 2010, attesting that on January 29, 2010, counsel

had served a copy of the 1/29/10 Report & Recommendation on Fiuk via Certified and First Class mail. (Doc. No. 24.)

Objections to a Report and Recommendation must be filed within fourteen (14) days of its receipt. (See 28 U.S.C. § 636(b)(1)(C); see also Fed. R. Civ. P. 6(a).) As the 1/29/10 Report & Recommendation explicitly notes, assuming that service was effected by the court's February 8, 2010 deadline - and counsel's February 16, 2010 affirmation makes clear that is the case here - the period for timely filing any objections to the 1/29/10 Report & Recommendation expired at the latest on February 22, 2010. (Doc. No. 23 at 3.) Thus, the statutory period for filing objections has now lapsed, and no objections to the 1/29/10 Report & Recommendation have been filed. (See 28 U.S.C. § 636(b)(1)(C); see also Fed. R. Civ. P. 72(b)(2).)

In reviewing a Report and Recommendation, the district court generally makes a *de novo* determination and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no timely objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Upon a careful review of the 1/29/10 Report & Recommendation, and considering that Fiuk has failed to object to its well-reasoned recommendation, the court finds no clear error on the face of the record and hereby affirms and adopts the 1/29/10 Report & Recommendation in its entirety as the opinion of the court.

Accordingly, all claims asserted by Fiuk shall be dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff's counsel is requested to send a copy of this Order to Fiuk at his last known address and to file a Declaration of Service by ECF no later than March 1, 2010.

SO ORDERED.

Dated: February 26, 2010
Brooklyn, New York

_____/s/
Kiyo A. Matsumoto
United States District Judge